

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

MANUEL VERA BETANCOURT
PETITIONER

C.A. 04-11876 REL

VS

JOHN ASHEROFT ATTORNEY GENERAL
FOR UNITED STATES, ET AL

U.S. DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

PETITIONER'S SUPPLEMENTAL RESPONSE TO
THE GOVERNMENT'S MOTION TO DISMISS

THE PETITIONER ASSERTS THE FOLLOWING IN
RESPONSE TO THE MOTION TO DISMISS, DATED 9/20/04:

THERE IS NO EVIDENCE OR INFORMATION TO SUPPORT
THE GOVERNMENT CLAIM MR. BETANCOURT IS EITHER
VIOLENT OR DANGEROUS TO SOCIETY. THERE HAS
NEVER BEEN ANY OPPORTUNITY FOR MR. BETANCOURT
TO CHANGE HIS "EXCLUDED ALIEN" STATUS. THE INS
HAS MADE NO EFFORT WHATSOEVER TO DEPORT
MR. BETANCOURT. MR. BETANCOURT'S LACK OF
LEGAL COUNSEL AND PROPER REPRESENTATION AT THE
APRIL 8, 2003 HEARING WAS PREJUDICIAL. MR.
BETANCOURT HAS NOW BEEN INCARCERATED FOR
OVER EIGHTEEN MONTHS BY THE INS AND THIS
IS CONTRARY TO CONGRESS'S INTENT AND THE
UNITED STATES CONSTITUTION.

LACK OF EVIDENCE TO SUPPORT THE INS CLAIM OF INELIGIBLE PAROLE

IN THE GOVERNMENT'S MOTION TO DISMISS IT CLAIMS TO CITE FACTS REGARDING MR BETANCOURT'S CRIMINAL HISTORY. HOWEVER, THE GOVERNMENT HAS PURPOSELY DISTORTED THE FACTS AS FOLLOWS.

WHILE IT IS TRUE IN THE 1980'S, NEARLY TWENTY YEARS AGO, MR BETANCOURT DID HAVE THREE CONVICTIONS FOR WHICH HE SERVED A TOTAL OF LESS THAN 4 YEARS. SINCE THAT TIME, MR BETANCOURT HAS NOT HAD ANY ARRESTS, CONVICTIONS OR INCIDENTS OF VIOLENCE OR DEMONSTRATED HE POSSES ANY RISKS TO SOCIETY.

IN, FACT, SINCE 1988 MR BETANCOURT HAS NOT SERVED ANY JAIL TIME WHATSOEVER. HIS ONLY CONVICTIONS SINCE 1988 HAVE BEEN DRUG RELATED AND IN BOTH INSTANCES THE COURT ORDERED PUNISHMENT WAS EITHER COMMUNITY SERVICE, PROBATION OR A SUSPENDED SENTENCE.

THUS, A COURT OF LAW HAS REFRAINED FROM ANY SENTENCE OF INCARCERATION BECAUSE THE COURT DETERMINES MR BETANCOURT IS NOT A DANGER TO SOCIETY.

(4)

RIGHTS OF INADMISSIBLE (EXCLUDABLE) ALIENS

IT WOULD APPEAR THE GOVERNMENT'S POSITION IS THAT EXCLUDABLE ALIENS ARE NOT ENTITLED TO THE BASIC RIGHTS THE FOUNDERS OF THIS COUNTRY PROMISED.

FOR INSTANCE,

MR BETANCOURT HAS NO REMEDY WHICH MIGHT CURSE THE INS IMPOSED DEFINITION OF HIS ALIEN STATUS. THE GOVERNMENT GOES FURTHER BY CLAIMING MR BETANCOURT DID "NOT CONTEST HIS STATUS AS AN EXCLUDABLE ALIEN". IS MR BETANCOURT SOMEHOW RESPONSIBLE FOR A LACK OF ACTION THE GOVERNMENT WILL NOT ALLOW?

MR BETANCOURT DOES HAVE A RIGHT TO AN ANNUAL REVIEW OF HIS DETENTION STATUS BUT THIS HAS ALSO BEEN IGNORED GIVEN THE FACT HE HAS BEEN DETAINED BY THE INS FOR OVER TWO YEARS, YET ONLY REVIEWED ONCE.

BASED UPON FOOTNOTE SIX ON PAGE FOUR OF THE GOVERNMENT'S MOTION THE INS HAS NOT

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PRUDAY ~~FILED~~ FOLLOWED ITS OWN CRITERIA FOR DETENTION AND HENCE FURTHER VIOLATES WHAT MARBINAL RIGHTS CONGRESS BESTOWED UPON EXCLUDED ALIENS.

IN CONCLUSION,

I BELIEVE THE FACTS ARE CONTRARY TO THE GOVERNMENT POSITION IN SO FAR AS I HAVE DEMONSTRATED I AM NOT A RISK TO SOCIETY, THE JUDICIAL SYSTEM OVER A PERIOD OF OVER FOURTEEN YEARS DOES NOT BELIEVE I AM A RISK TO SOCIETY, I HAVE NOT HAD PROPER LEGAL REPRESENTATION IN INS PROCEEDINGS AND I HAVE BEEN HELD AGAINST MY WILL FOR OVER TWO YEARS.

SUCH WRONGFUL, UNJUSTIFIED INCARCERATION IS THE BASIS OF WHICH THE HABEAS CORPUS WRIT WAS INTENDED AND I PLEAD WITH THIS COURT TO DO THE RIGHT THING AND GRANT MY REQUEST TO RETURN TO MY WIFE, TWO YEAR OLD DAUGHTER AND MY DESIRE TO BE A POSITIVE CONTRIBUTOR TO SOCIETY.

RESPECTFULLY YOURS, Manuel Vera Betancourt
MANUEL VERA BETANCOURT

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